

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

JOEL RIOS,
Plaintiff,

v.

ZULFIQAR A. AWAN and
PRIMELINK EXPRESS, INC.,
Defendants.

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CIVIL ACTION NO. 4:22-cv-6

DEFENDANTS' NOTICE OF REMOVAL

To the Honorable Court:

Come now Defendants, **PRIMELINK EXPRESS, INC. AND ZULFIQAR A. AWAN** (hereinafter “Defendants”) and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this their Notice of Removal to the United States District Court for the Western District of Texas, Pecos Division and respectfully show the Court the following:

PROCEDURAL BACKGROUND

1. On November 12, 2021 Joel Rios filed his Original Petition styled *Joel Rios v. Zulfiqar A. Awan* in the 143rd Judicial District Court in Ward County, Texas, originally pending as Cause No. 21-11-25899-CVW. *See* Exhibit 3 attached hereto.

2. Plaintiff served Primelink through alternative service on January 11, 2022. *See* Exhibit 8 attached hereto and incorporated by reference. This Notice of Removal is timely as it filed within 30 days of service of the lawsuit.

3. Defendant Awan was served on January 25, 2022. *See* Exhibit 9. This Notice of Removal is timely as it filed within 30 days of service of the lawsuit.

4. Plaintiff alleges that the accident at issue occurred as a direct and proximate result of Defendants' negligence, negligent entrustment, and gross negligence resulting in personal injuries and damages to Plaintiff.

5. Removal was filed within 30 days of receipt by Defendants of a copy of the initial pleading by setting forth the claim for relief upon which such action or proceeding is based and is therefore timely filed under 28 U.S.C. § 1446(b). *See Murphy Bros. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347-48 (1999) (notice of removal is timely under 28 U.S.C. § 1446(b) if filed within 30 days after service of the complaint).

6. This United States District Court for the Western District of Texas, Pecos Division, is the district and division embracing the place where such action is pending. *See* 28 U.S.C. § 103(4).

7. All Defendants have been served at the time of the filing of this removal and jointly file and consent to this removal to the United States District Court for the Western District of Texas, Pecos Division.

8. Defendants will give written notice of the filing of this Notice of Removal to all parties of record and to the Clerk of the District Court in Ward County, Texas.

9. Pursuant to 28 U.S.C. § 1446, true and correct copies of the documents filed in the state court action are attached to this Notice of Removal and are incorporated herein by reference.

10. Defendants expressly reserve the right to raise all defenses and objections to Plaintiff's claims or to otherwise plead after the action is removed to this Honorable Court.

REMOVAL BASED ON DIVERSITY JURISDICTION

11. This Court has jurisdiction based on 28 U.S.C. §1332(a)(1) in that “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States.”

12. The court must evaluate the removing party’s right to remove “according to the plaintiffs’ pleading at the time of the petition for removal.” *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939); *see also Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (“The jurisdictional facts that support removal must be judged at the time of removal.”); *Martinez v. Pfizer Inc.*, 388 F.Supp.3d 748, 761 (W.D. Tex. 2019) (“because jurisdiction is fixed at the time of removal, the jurisdictional facts supporting removal are examined as of the time of removal”).

Amount in Controversy is Met.

13. Plaintiff has stated in his Original Petition that he seeks monetary relief over \$250,000.00 but not more than \$1,000,000, which exceeds the minimum jurisdictional limits of this Court for removal. *See Exhibit 1 at Section III.*

14. A Complete Diversity Exists Among Parties.

11. This Court has subject matter jurisdiction over this action because Plaintiff’s citizenship is diverse from the citizenship of all Defendants, thereby satisfying the requirements of 28 U.S.C. § 1332.

12. Plaintiff alleges in his Original Petition that he resides in El Paso, El Paso County, Texas. Thus, he is a citizen of the state of Texas. *See Exhibit 3 at ¶4.*

13. Plaintiff correctly asserts Defendant is a California company. *See Exhibit 3 at ¶6.* Defendant, Primelink Express, Inc., is a foreign corporation incorporated under the laws of the

State of California and has its principal place of business at 825 Navy Dr., Stockton, California, 95206. *See* Exhibit 11. As such, the corporation is considered a citizen of California as it is registered in California and has its principal offices in California.

14. Plaintiff's Original Petition alleges that Defendant Awan resides in Stockton, California making him a citizen of California. *See* Exhibit 3 at ¶5.

15. Because there exists complete diversity of citizenship and an amount in controversy in excess of \$75,000, exclusive of interests and costs, this Court has original jurisdiction over this action. *See* 28 U.S.C. § 1332(a). As a result, this action is removable pursuant to 28 U.S.C. § 1441(a).

JURY DEMAND

16. Defendants demand a jury on all triable issues pursuant to Federal Rules of Civil Procedure 38 and 81(c).

WHEREFORE, Defendant Primelink Express, Inc. and Zulfiqar A. Awan pray that this Court accept its Notice of Removal for filing in accordance with the provisions of 28 U.S.C. § 1441, *et. seq.*, and grant all other relief to which they may be justly entitled.

Respectfully submitted,

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Date: February 8, 2022.

By: /s/ Daniel H. Hernandez
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated above, I served the foregoing on the following counsel of record.

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